

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK BURTON,)	
)	
Petitioner,)	
)	
v.)	No. 4:07 CV 1868 JCH
)	
PAT SMITH,)	
)	
Respondent.)	

MEMORANDUM AND ORDER DISMISSING PETITION

This action is before the court upon the petition of Missouri state prisoner Mark Burton for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) For the reasons set forth below, the Court denies the petition.

PROCEDURAL HISTORY

Burton filed the instant habeas petition on November 1, 2007. (Doc. 1.) This court denied Burton relief because the petition is a successive one:

On February 2, 1994, petitioner was found guilty by a jury in the Circuit Court of the City of St. Louis of murder in the second degree and of armed criminal action. The court sentenced petitioner to concurrent sentences of life and thirty years imprisonment. In state court, petitioner appealed his conviction and sought post-conviction relief. See, e.g., State v. Burton, 939 S.W.2d 419 (Mo. Ct. app. 1996). Petitioner additionally challenged his 1994 convictions through the filing of his first habeas petition on December 1, 1997, and then through his later filing of an amended petition on February 4, 1998. Both petitions were denied by the instant Court on March 6, 2001. See Case No. 4:97CV2392DDN (E.D.MO. March 6, 2001).

To the extent that petitioner seeks to bring new claims for habeas relief, petitioner must obtain leave from the United States Court of Appeals for the Eighth Circuit before he can bring those claims in this Court. 28 U.S.C. § 2244(b)(3)(A). Because petitioner did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2254 application in this Court, the Court lacks authority to grant petitioner the relief he seeks.

Burton v. Smith, No.4:07 CV 1868 DDN / JCH, 2007 WL 4210520, at *1 (E.D. Mo. Nov. 27, 2007), petition denied, No. 07-3733 (8th Cir. Apr. 7, 2008). Rather than dismiss the petition, this Court transferred the petition to the Court of Appeals. Id.

The Court of Appeals has denied Burton's petition for authorization to file a successive habeas application in this court. Burton v. Smith, No. 07-3733 (8th Cir. Apr. 7, 2008.) The "denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Because the Court of Appeals for the Eighth Circuit denied petitioner Burton authorization to file a successive habeas corpus petition under 28 U.S.C. § 2254, there is no authority for this court to proceed on the pending petition.

Therefore,

IT IS HEREBY ORDERED that the petition of Mark Burton for a writ of habeas corpus be and is dismissed with prejudice. A certificate of appealability is denied.


UNITED STATES DISTRICT JUDGE

Signed on this 26th day of August, 2008.